

Exhibit 2

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: JOHNSON & JOHNSON MDL NO.:
TALCUM POWDER PRODUCTS 16-2738 (MAS)(RLS)
MARKETING, SALES PRACTICES,
AND PRODUCTS LIABILITY
LITIGATION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, ATLANTIC COUNTY

BRANDI CARL, DOCKET NO.
Plaintiff, ATL-L-06546-14

V. TALC-BASED POWDER
JOHNSON & JOHNSON, ET AL., PRODUCTS LITIGATION
Defendants. CASE NO. 300

DIANA BALDERRAMA, DOCKET NO.
Plaintiff, ATL-L-6540-14
V. TALC-BASED POWDER
JOHNSON & JOHNSON, ET AL., PRODUCTS LITIGATION
Defendants. CASE NO. 300

EXPERT DEPOSITION OF
KATHLEEN M. SUTCLIFFE, PHD
Tuesday, May 28, 2024, 9:11 a.m.

Reported by: Denise Dobner Vickery, CRR, RMR
JOB NO.: 6717900

P R O C E E D I N G S

- - -

KATHLEEN M. SUTCLIFFE, PHD

called for examination, and, after having been
duly sworn, was examined and testified as
follows:

- - -

EXAMINATION

- - -

BY MR. TISI:

Q. Good morning.

A. Good morning.

Q. Please state your name.

A. Kathleen M. Sutcliffe.

Q. And are you what's called a -- you
have a PhD in Organization Theory and Behavior?

A. Correct.

Q. And would it be fair that you
describe yourself as an expert in what is called
organization behavior and theory?

A. Organization science, organization
behavior, organization theory. Correct.

Q. Okay. And you are designated in
this case as an expert in that field, correct?

1 A. Correct.

2 MR. TISI: All right. I'd
3 like to hand you what is marked as
4 Exhibit Number 1, which is a copy of your
5 report but I -- excuse me. A copy of
6 your curriculum vitae.

7 (Document marked for
8 identification as Sutcliffe Exhibit 1.)

9 BY MR. TISI:

10 Q. And this is -- this is curriculum
11 vitae.

12 Is this your professional resumé?

13 A. Correct.

14 Q. Is it complete as of today?

15 A. Let me just check one thing.

16 If it was -- came from the report,
17 it is complete as of today.

18 MR. TISI: Okay. And Exhibit
19 Number 2 I'm going to have marked,
20 although I see you have in front of you,
21 your expert report with appendices and
22 exhibits.

23 (Document marked for
24 identification as Sutcliffe Exhibit 2.)

1 Q. Now, in your report, Exhibit
2 Number 2, you have a section entitled "Plaintiffs'
3 Causal Narrative" where you characterize what you
4 believe to be the plaintiffs' claims, correct?

5 A. Correct.

6 Q. All right. And you call us and our
7 expert's interpretation of the data and the
8 evidence cherry-picking, don't you?

9 A. Yes.

10 Q. And you mention that several times
11 in your report, correct?

12 A. Yes.

13 Q. You would never want to be accused
14 of that, correct?

15 A. It is a bad practice.

16 Q. And you believe that your
17 methodology does not -- accounts for
18 cherry-picking, correct?

19 A. My methodology is a well-known,
20 established qualitative methodology that is very
21 -- that is excellent for the kind of work that I
22 have done.

23 Q. Okay. And you call that sensemaking
24 methodology, correct?

1 A. No, that's not correct.

2 Q. What is the methodology called?

3 A. The methodology is a qualitative
4 methodology.

5 Q. What is it called?

6 A. It is called a qualitative
7 methodology.

8 Q. That doesn't have a name in your --
9 in your field of practice?

10 Qualitative methodology is something
11 that can be used across -- across disciplines.

12 Do you have anything in your field
13 where you identify it as a methodology?

14 A. A qualitative methodology can be
15 used across disciplines, and it is used in the
16 area of organization science.

17 Q. Okay. Now, particularly you
18 reviewed the reports of David Kessler, former FDA
19 Commissioner, correct?

20 A. I have looked at many -- at many
21 reports. I'm not sure what you're asking.

22 Q. I'm asking you: You've reviewed the
23 expert report of David Kessler, an FDA
24 Commissioner, correct?

1 A. Yes, I did.

2 Q. Okay.

3 A. Which did not include any kind of
4 methodology.

5 Q. Okay. That wasn't my question.
6 Please answer my questions, ma'am.

7 A. I reviewed the report, and as I
8 said, it didn't contain a methodology.

9 Q. That wasn't my question.
10 Did you review the report?

11 A. I reviewed the report.

12 MR. EWALD: She answered your
13 question.

14 BY MR. TISI:

15 Q. Okay. Did you -- did you review the
16 report of George Newman, an expert in marketing
17 and a psychologist, correct?

18 A. I did.

19 Q. Okay. Did you review any other
20 reports that you can remember of any other
21 plaintiffs' experts?

22 A. I do not. I may have reviewed
23 reports over the five years I've been studying
24 this. I don't remember.

1 Oh, yeah. I reviewed David or --
2 oh, my gosh. Now I'm blocking on his name but,
3 anyway, I reviewed reports last fall.

4 Q. Do you remember who it was?

5 A. David Michaels.

6 Q. Okay. And have you reviewed any
7 depositions --

8 A. I --

9 Q. -- of any experts?

10 A. I reviewed Dr. Kessler's deposition.

11 Q. Okay. Did you review Dr. Newman's
12 deposition?

13 A. No.

14 Q. And you believe their analysis is
15 flawed because they engage in what you call
16 hindsight bias, correct?

17 A. Correct.

18 Q. Okay. And to combat hindsight bias,
19 you say your methodology considers what was being
20 said and done in the medical and scientific
21 community and by other stakeholders and what they
22 did at the time, correct?

23 A. Correct.

24 Q. Okay. And not with the benefit of

1 what we know now, correct?

2 A. Not -- not with the benefit of what
3 we know now.

4 Q. All right. So --

5 A. I wanted to understand the context
6 of action from the perspective of the
7 participants.

8 Q. At the time?

9 A. What was happening at the time.

10 Q. And so it's important for you as an
11 expert to actually look at the data as it
12 developed over time, correct?

13 A. I looked at a large amount of data
14 over time. In fact, a large amount of data over
15 decades.

16 Q. Perfect, and we're going to ask --
17 I'm going to ask some of those questions.

18 Okay?

19 A. (Nods head).

20 Q. Okay. So what is sensemaking?
21 We've talked about that as part of your process.

22 What is sensemaking?

23 A. Sensemaking is a well-established
24 conceptual framework in organization theory.

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1 Q. Okay. And what is sensemaking?
2 Explain it to me as if I was your Uncle Charlie.
3 Tell me in a very basic way.

4 A. In a basic way, sensemaking is the
5 process of how information enters an organization,
6 how it's interpreted, how it's acted upon, how it
7 is reaffirmed. Essentially, it answers two
8 questions: What's the story? And now what?

9 Q. Okay. What's the story? And now
10 what?

11 And that's dependent upon the things
12 that were available, for example, in this case,
13 the medical and scientific literature, correct?

14 A. It's dependent on many kinds of
15 things.

16 Q. Okay. I'm asking you the kinds of
17 examples.

18 What was being said in the medical
19 and scientific committee -- scientific community
20 one of the things that would come into an
21 organization like this?

22 A. It's -- I guess I would back up --

23 Q. Uh-huh.

24 A. -- and I would say that it's

1 of the asbestos. True?

2 A. Asbestos is part of my report,
3 correct.

4 Q. Okay. And in addition to your
5 report, there are numerous tables to your report.
6 For example, there are tables that deal with
7 mining, the characteristics of asbestos, testing
8 methods, test results.

9 You have all kinds of tables and
10 appendices related to those issues, correct?

11 A. Correct.

12 Q. All right. You're not a
13 mineralogist, are you?

14 A. I'm not a mineralogist.

15 Q. You're not a geologist?

16 A. I'm not a geologist.

17 Q. You're not an expert in mining?

18 A. Correct.

19 Q. You're not an expert in mining for
20 talc?

21 A. Correct.

22 Q. You're not an expert in testing talc
23 for the presence of asbestos or any unwanted
24 constituents, correct?

1 A. I am not a toxicologist or a
2 microscopist.

3 Q. That wasn't my question.
4 You're not an expert in testing for
5 talc?

6 A. I am not a testing, correct.

7 Q. Actually, you know nothing, you have
8 known nothing. You're not an expert in PLM, XRD,
9 or any other testing that you referred to in your
10 report, correct?

11 A. No. What I know of these fine
12 details are what I've learned over five years.

13 Q. Right.
14 In the context of the litigation?

15 A. In studying this project.

16 Q. Right.

17 A. In studying -- in studying thousands
18 of pages of data.

19 Q. Would you -- would you characterize
20 yourself now as an expert in testing?

21 A. I'm not an expert on testing, and
22 I'm not opining in this -- in this matter.

23 Q. Okay. Now, I've reviewed all the
24 references in your CV.

1 A. Uh-huh.

2 Q. Done a word search of that.

3 Would it surprise you that the word
4 "asbestos" doesn't appear in any of your published
5 literature?

6 A. Okay.

7 Q. Does it?

8 A. Not that I recall.

9 Q. Now, in your report, Exhibit
10 Number 2, there's a Figure 1.

11 Do you see that?

12 A. Oh, maybe I should look at your
13 exhibit.

14 Q. It's on F-1.i.

15 Here I can show you?

16 A. Yeah.

17 Q. Okay. It talks about serpentine and
18 amphiboles and asbestiform and non-asbestiform and
19 tremolite and chrysotile.

20 You see all those characterizations?

21 A. Yes.

22 Q. You've never used those words in
23 your professional practice outside of this
24 litigation, have you?

1 A. I have not written about these
2 things, correct.

3 Q. You've never even probably said
4 those words. True? Have you --

5 A. I have said them a lot, actually.

6 Q. Have you ever used the word
7 "chrysotile" outside of litigation?

8 A. I've -- first of all, I don't use it
9 inside litigation but, no, I don't think I've
10 talked about it.

11 Q. Well, it's in your report?

12 A. Yes.

13 Q. Okay. Do you know whether or not
14 any of the testing that J&J did was specifically
15 designed to test for chrysotile?

16 A. I believe that TEM is -- is -- is a
17 sensitive method.

18 Q. Okay. Before this case, before
19 being involved in this project, did you know what
20 an amphibole is?

21 A. I do not remember whether I knew or
22 I didn't know.

23 Q. Do you know -- did you know whether
24 or not you knew what chrysotile was?

1 A. I honestly do not remember whether I
2 did or not.

3 Q. You're not a toxicologist, ma'am.
4 True?

5 A. I am not a toxicologist, correct.

6 Q. Have you ever taken a course in
7 toxicology?

8 A. I am not a toxicologist, correct.

9 Q. Okay. That wasn't my question.
10 Did you ever take a course in
11 toxicology?

12 A. Again, I haven't studied toxicology.

13 Q. Have you ever -- can you answer my
14 question?

15 Have you ever taken -- I'm not a
16 statistician, but I took statistics in college.

17 A. Uh-huh.

18 Q. My question is: Did you take --
19 have you ever taken a course in toxicology?

20 A. I have not taken a course in
21 toxicology.

22 Q. Thank you.

23 Have you ever -- you are not an
24 epidemiologist?

1 A. I'm not an epidemiologist. Of
2 course, I have read the literature. In my last
3 book, I drew a lot on epidemiology of medical
4 mistakes.

5 Q. Ma'am, that wasn't my question.

6 MR. TISI: Could you please
7 read back my question.

8 (The reporter read the record
9 on page 53 lines 23-24.)

10 THE WITNESS: Again, I'm not
11 an epidemiologist --

12 BY MR. TISI:

13 Q. Thank you.

14 A. -- but I certainly have read many
15 epidemiological studies.

16 Q. Except not the epidemiology studies
17 in this case?

18 A. In this case, that was not my
19 assignment.

20 Q. All right. And have you ever taken
21 a course in epidemiology?

22 A. It's hard to remember whether or not
23 in my nursing studies. I -- I don't recall
24 whether I did or not.

1 Q. Let's talk a bit about cosmetics.
2 We talked about the Food, Drug, and
3 Cosmetic Act.

4 You are not an expert in FDA
5 regulations, are you?

6 A. I'm not a regulatory expert,
7 correct.

8 Q. Okay. You're not an expert in FDA
9 regulations as they pertain to Johnson's Baby
10 Powder or Shower to Shower, are you?

11 A. I am not -- again, I'm not a
12 regulatory expert and I'm not opining on that in
13 this case.

14 Q. Do you know the standard for adding
15 a warning to a cosmetic?

16 A. I do not.

17 Q. Do you know the standard for
18 adulteration or misbranding?

19 A. I am not opining in this case on --
20 on any regulatory standards.

21 Q. Okay. Have you ever drafted or
22 participated in the drafting of a label for a
23 cosmetic product?

24 A. Again, I'm not a regulatory expert.

1 I have not done --

2 Q. That wasn't my question.

3 A. I have not done anything related
4 to -- to warnings.

5 Q. Okay. So my question is: Have you
6 ever drafted a label of any kind for a cosmetic
7 product?

8 A. I have not.

9 Q. Okay. Have you ever drafted
10 instructions for a cosmetic product?

11 A. I have not.

12 Q. Have you ever participated in
13 drafting warnings or instructions for any product
14 covered by the Food, Drug, and Cosmetic Act?

15 A. I am not a regulatory expert and I
16 have not done -- I have not created a warning.

17 Q. Okay. Have you ever participated in
18 any way, outside of this litigation, in
19 sensemaking with respect to drafting a warning or
20 an instruction for a product covered by the Food,
21 Drug, and Cosmetic Act?

22 A. I don't -- in your -- could you --
23 could you --

24 MR. EWALD: Yeah.

1 culture in the time leading up to the Deepwater
2 Horizon.

3 Q. And your conclusion was they did
4 everything right?

5 A. I had, you know, broad conclusions,
6 and I don't believe -- I think you're
7 mischaracterizing what I -- what I said.

8 Q. You said they had good safety
9 culture. True?

10 A. I am saying that BP was enacting,
11 enabling, and elaborating a safety culture and it
12 was -- and they -- and they were taking actions to
13 do that.

14 Q. And you were designated by BP,
15 correct?

16 A. I -- I beg your pardon?

17 MR. EWALD: Objection to form.

18 BY MR. TISI:

19 Q. You were designated as an expert?
20 You worked for BP in that litigation?

21 A. Yes, I worked for BP.

22 Q. And your testimony was struck in
23 that case, wasn't it?

24 A. No, that -- my testimony in the --

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1 in the -- there were two phases. I think it was
2 the -- I can't remember what the names of them
3 are.

4 My testimony was struck because
5 another expert, his testimony was struck and so
6 mine was not needed.

7 Q. Okay. Why was his testimony struck?

8 A. I have no idea.

9 Q. Okay. So your testimony was not
10 needed?

11 A. My testimony was not needed.

12 Q. Have you ever been struck in any
13 other case involving -- in litigation as either
14 being not qualified, not applying appropriate
15 methodology, or your testimony doesn't fit the
16 case?

17 A. Are you asking about a Daubert
18 motion?

19 Q. Not necessarily. I'm asking struck
20 for any reason.

21 A. As far as I know, my testimony has
22 never been struck.

23 Q. Other than BP?

24 A. Aside from when the expert was

1 eliminated and my testimony wasn't needed.

2 Q. Okay. All right. Do you have a
3 copy of that order?

4 A. Do I? No.

5 MR. TISI: All right. Let me
6 go to Exhibit Number 3, which is the
7 notice of deposition.

8 (Document marked for
9 identification as Sutcliffe Exhibit 3.)

10 BY MR. TISI:

11 Q. Now, there's a lot to cover here,
12 but I'm going to kind of cut it down to the -- to
13 the minimum here.

14 Have you seen this document before?

15 A. Yes.

16 Q. Okay. Have you reviewed documents?
17 Have you reviewed your files for complying with
18 this subpoena, this notice of deposition?

19 A. I believe that I have.

20 Q. Okay. First of all, you charge
21 \$1100 an hour to do your work. True?

22 A. Correct.

23 Q. All right. And how many hours have
24 you devoted to this project over the years?

1 for a moment. We've talked about your
2 qualifications. Let's talk about your
3 methodology.

4 You used the word "sensemaking."

5 Would you explain that in layman's
6 term for Uncle Charlie?

7 A. I believe I answered that question
8 earlier today.

9 Q. Enlighten me again, please.

10 A. Again, it is a well-established
11 framework in organization studies, organization
12 behavior, organization theory.

13 Q. And what does it attempt to do?

14 A. It attempts to provide insight into
15 how people -- how organizations size up the
16 situation. How they understand what they're
17 facing. Before people and organizations take
18 action, they have to understand what they're
19 facing. This is a way of understanding the
20 institutionalized knowledge that is developed in
21 an organization.

22 Q. Okay. So I'm just a layperson here.
23 I have to confess. This is the first time I've
24 ever deposed a behavioral, organizational expert.

1 Sensemaking is an attempt to -- and
2 what's the phrase you just used? I wish I had it
3 in front of me. It's an attempt to look at what
4 they're facing at the time?

5 A. Sensemaking is a way to understand
6 the process of how entities come to understand and
7 how they develop their institutionalized knowledge
8 about particular situations.

9 Q. Okay. So if we are to use the word,
10 what are they facing? Okay? We talked about
11 before.

12 One of the things we're trying to
13 figure out, for example, what J&J was facing in
14 terms of -- I'm not talking about disruptive
15 ambiguity, but in terms of what they're facing on
16 the issues relating to the safety of talc, that
17 could come from various sources both external and
18 internal, correct?

19 A. It's a process --

20 Q. Right.

21 And what they're facing --

22 A. -- of how --

23 Q. I'm sorry.

24 A. Can I just continue?

1 well-being of its consumers.

2 Q. Over time?

3 A. Its patterns. I said earlier that I
4 was looking at patterns of action over decades.

5 Q. That's what I want to know. Okay?
6 It's not limited to a particular
7 month or a day. It's looking at the lifecycle of
8 the product, and in this case, we're talking
9 about, let's say, from the late '60s, early '70s
10 through the present. True?

11 A. I am not -- I am not thinking about
12 it as a lifecycle of the product. I am thinking
13 about it as a process --

14 Q. Okay.

15 A. -- of understanding and creating
16 institutionalized knowledge over time.

17 Q. Now, you talked about disruptive
18 ambiguity several times. Let me get a definition
19 of what that means.

20 A. It means that there's something
21 that, you know, surprised us that we weren't
22 expecting.

23 Q. Okay.

24 A. It just means uncertainty.

1 Ambiguity means that there are multiple and
2 conflicting interpretations of what's going on.

3 Q. Okay. So uncertainty would, for
4 example, the Cramer study, the publication of the
5 Cramer study and the subsequent epidemiologies
6 that came out, be part of raising questions that
7 would be disruptive ambiguity?

8 A. I think any -- any -- any study or
9 any piece of information that conflicts with what
10 our -- what we think would be considered --
11 considered that. I mean, it's not black and
12 white. I mean, it's --

13 Q. Okay.

14 A. There are interpretations.

15 Q. It happens over time. Things
16 happen, and I get it. Look, this part of it I'm
17 really just trying to understand. Okay?

18 A. Yeah.

19 Q. So -- so over time things happen
20 that cause people to react and evaluate. True?

21 A. Over time things happen that aren't
22 consistent with our -- with the way we think the
23 world is working and so they -- you know, it's a
24 surprise.

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1 not in your report is what did the epidemiology
2 studies say, correct?

3 A. Again, you know, I was not -- I was
4 not charged with looking at the epidemiology
5 studies. I'm not opining on epidemiology.

6 Q. But you're not -- but you're not an
7 expert in asbestos either, and you do a lot of
8 opining on that. True?

9 A. I am --

10 MR. EWALD: Objection to form.

11 THE WITNESS: I am not
12 opining on asbestos either.

13 BY MR. TISI:

14 Q. Go to paragraph 12, if you could, of
15 your report.

16 Okay. Your Summary of Opinions
17 section. I just want to make sure I understand
18 the scope of your report.

19 It says you were retained by J&J and
20 you list what you were retained to do here,
21 correct?

22 A. Correct.

23 Q. Okay. And after you talk about
24 Ms. Carl and Ms. Balderrama, you say that

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1 Q. And J&J also knew that its test
2 could not guarantee that talc was 100 percent
3 asbestos-free. True?

4 A. Again, I am not opining. I'm not a
5 -- I'm not a --

6 Q. Yeah.

7 A. -- microscopist or a toxicologist.
8 What I do know is that J&J adopted a
9 technique that went beyond the industry standard
10 to test its products over decades.

11 Q. You test -- in one of the very last
12 footnotes in one of your appendices -- and I'll
13 get it in a moment because it's a little bit out
14 of order of where I was going to go.

15 You acknowledge that there were
16 detection limits of the tests that they -- that
17 they -- that they employed. True?

18 A. Again, I -- I am not opining on
19 testing. I'm not a testing expert.

20 Q. Okay.

21 A. That is better left -- that question
22 is better left for somebody else.

23 Q. Next thing it says here -- we'll
24 talk about that. FDA. Next sentence.

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1 a safety culture, have a defined set of procedures
2 to follow --

3 A. Uh-huh.

4 Q. -- enact them, and then continue to
5 elaborate on them over time. True?

6 A. That's what the -- the process that
7 I've outlined for safety culture, which of course,
8 you know, in this case, I didn't -- I wasn't
9 analyzing the safety culture.

10 Q. Okay. So as part of your analysis,
11 did you notice that there were clear guidelines in
12 the '70s, '80s, '90s, and 2000s as to whether or
13 not there were policies and procedures, for
14 example, to analyze potential risks?

15 A. My role in this -- in this case was
16 different than my role in the BP case.

17 I was not analyzing the safety
18 culture of J&J over time.

19 What I was doing is what I've said
20 earlier is trying to understand what J&J knew and
21 when about the potential safety -- safety of its
22 product and whether or not their actions were
23 consistent with what I would expect to see in a
24 company that cared about the well-being of its

1 consumers.

2 Q. Well, I think you said "and how they
3 respond to that information." I'm looking for the
4 words you used, but I wrote them down. I think
5 you said how they actually.

6 A. The actions that they take --

7 Q. Okay.

8 A. -- in response to developing their
9 institutionalized knowledge.

10 Q. But the action --

11 A. For example -- I can give you an
12 example.

13 Q. I don't really want an example. I
14 want you to answer my questions.

15 A. Okay.

16 Q. So if a company takes actions,
17 oftentimes actions are in a company like this you
18 would expect there to be a policies and procedure
19 that would describe what actions should be taken
20 and when. True?

21 MR. EWALD: I'm sorry. When
22 you're talking about "this," you're
23 talking about BP? J&J?

24 MR. TISI: J&J.

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1 light of the ambiguity of the -- of the studies,
2 disruptive ambiguity of the studies, maybe we
3 ought to take risk mitigation"? Did you see any
4 discussion about that?

5 A. What I saw is that J&J was closely
6 following the research, that it was paying
7 attention to regulatory bodies, that it was
8 engaging with people in workshops, and that it was
9 being aware of what was -- what regulatory bodies
10 were saying.

11 Q. So other than being aware, you're
12 not -- move to strike the answer because it's not
13 responsive.

14 My question was: other than being
15 aware of the literature, which I agree that they
16 were aware of everything, my question is: Other
17 than being aware, would you tell me whether or not
18 there was any discussion about whether on balance
19 warnings, instructions or perhaps a change in
20 design ought to -- ought to occur?

21 A. I was not looking at -- at a single
22 event or whatever. I'm looking at J&J's pattern
23 of actions over time.

24 Q. And I'm asking -- I'm asking you

1 about actions.

2 Do you see any actions within J&J
3 where they actively considered whether or not to
4 change to cornstarch?

5 Let's take it one at a time.

6 A. First of all, J&J had cornstarch
7 on -- on --

8 Q. Withdraw. Excuse me. Withdraw.
9 Withdraw because I'm going to talk about this as
10 well.

11 Withdraw Johnson's Baby Powder with
12 talc in favor of its cornstarch.

13 Do you see any discussion about
14 that?

15 A. I did not examine that issue.

16 Q. Okay. So the answer would be no,
17 you saw no discussion?

18 A. I can't say that I did or that I
19 didn't.

20 Q. Well, this is your time to actually
21 answer that question. Okay?

22 A. Yeah.

23 Q. Honestly.

24 So my question is: As you sit here

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1 today, do you remember seeing any discussion in
2 that 15-year period about whether or not you ought
3 to switch -- J&J ought to switch or withdraw its
4 product or at least put a warning label on it?

5 A. What I saw is that J&J was following
6 the research, was paying attention --

7 Q. Okay.

8 A. -- to regulators, and I did not -- I
9 can't say whether they did or they didn't because
10 I wasn't looking at that.

11 MR. TISI: Okay. Let's go to
12 2004, Exhibit Number 25.

13 Excuse me.

14 (Document marked for
15 identification as Sutcliffe Exhibit 18.)

16 BY MR. TISI:

17 Q. This is a different group of
18 researchers from Dr. Mills.

19 MR. EWALD: Is that 18?

20 MR. TISI: This is Exhibit
21 Number 18, yes, please.

22 BY MR. TISI:

23 Q. If you look at the left-hand side,
24 it says:

1 "This study provides some support
2 for the hypothesis that perineal talc use is
3 associated with an increased risk of EOC."

4 Do you see that? Left-hand side.
5 Excuse me. In the abstract.

6 A. Where is it? Left-hand side?

7 Q. Left-hand side. The bolded part,
8 last sentence.

9 A. Oh, okay. I see it.

10 Q. See that?

11 A. "Some support for the hypothesis."
12 I see it.

13 Q. Now, it also talks about -- if you
14 go halfway down the first full paragraph of the
15 article, it says:

16 "Collectively, these studies point
17 to a possible etiologic role of talc in ovarian
18 cancer via an inflammatory process at the site of
19 the ovarian epithelium."

20 Do you see that?

21 A. I see that.

22 Q. It goes on in the next paragraph.
23 It says:

24 "The role of cornstarch powder on

1 ovarian cancer has also been evaluated in
2 epidemiologic research and a recent review
3 concluded that there is no association between
4 this type of powder and increased risk of ovarian
5 cancer."

6 Do you see that?

7 A. I see that.

8 Q. But then it goes on to say:

9 "Cornstarch is also not thought to
10 exert the same toxicologic reaction in human
11 tissues as does talc."

12 Do you see that?

13 A. I see that.

14 Q. So they're making a comparison
15 between the risk-benefit of cornstarch and talc in
16 this article, correct?

17 A. They're raising the issue of
18 cornstarch in the article. I see where it's
19 written.

20 Q. And at the very last page of the
21 article, they say the question, however -- the
22 second sentence starts:

23 "However, given the suggestive
24 though uncertain role of talcum powder and EOC

1 found in epidemiologic studies, including the
2 present study, users should exercise prudence in
3 reducing or eliminating use. In this instance,
4 the precautionary principle should be invoked,
5 especially given that this is a serious form of
6 cancer, usually associated with a poor prognosis,
7 with no current effective screening tool, steady
8 incidence rates during the last quarter century
9 and no prospect for successful therapy. Unlike
10 other forms of environmental exposures, talcum
11 powder use is easily avoidable."

12 Do you see that?

13 A. I see what you're reading, correct.

14 Q. Is any part of that untrue at the
15 time? Not with hindsight, but looking at it like
16 right at that snapshot in time in 2004, is any
17 part of that not true from your perspective?

18 A. I'm just -- I see what's written
19 here. I can't say whether it's true or not true.
20 It is what the researchers wrote.

21 Q. Okay. This isn't referred to in
22 your -- in your sensemaking report, is it?

23 A. I wasn't looking at -- number one,
24 I've already said that I wasn't looking at a

1 systematic analysis of all the studies I looked
2 through.

3 Q. I'm not asking you to analyze the
4 study. I'm asking you -- look, and I really want
5 to be fair to you here.

6 We have now gone through several
7 articles and we're going to go through several
8 more where issues are saying not only is there a
9 potential association, which I'm not asking you to
10 do. You're not an epidemiologist.

11 But as somebody concerned with
12 safety, they're raising questions about whether or
13 not women should be warned, cornstarch ought to be
14 used, women should be instructed not to use it,
15 and studies be done.

16 All those things are being raised in
17 realtime. True?

18 A. The research was happening when it
19 was happening. And at the same time, you know,
20 what I have shown in my analysis is that J&J was
21 paying attention to the scientific research, that
22 it was paying attention to what regulators were
23 saying, that it was paying attention to -- to what
24 was happening.

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1 accelerated shift from talc to cornstarch.)"

2 You see that?

3 A. I see that.

4 Q. Okay. Did you see from your review
5 at any time that actually in this time frame J&J
6 was considering changing from talc to
7 cornstarch --

8 A. That's --

9 Q. -- in light of what was going on?

10 A. As I've said before, I have not
11 analyzed any single event or any single issue.

12 Q. Now, what they're forwarding here is
13 a company -- a press release from the American
14 Cancer Society and other organizations, correct?

15 A. I don't -- I see what's on here, but
16 I don't know what they're doing with this. I
17 can't say.

18 Q. It says:

19 "Medical Experts Recommend Women Use
20 Cornstarch Powder."

21 A. I see that.

22 Q. Realtime, not hindsight bias, right?

23 A. I see that.

24 Q. Okay. 1999 internal to J&J. True?

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1 either be warned or they should not use talc in
2 their genital area, correct?

3 MR. EWALD: Objection.

4 Mischaracterizes the documents.

5 THE WITNESS: First of all, I
6 did not do a systematic review of all the
7 studies. There were many studies we
8 know. There are many studies, and that
9 wasn't my role here.

10 My role was to establish that
11 J&J's institutional knowledge about the
12 safety of its product and to determine
13 the extent to which they were taking
14 actions that would show that they're a
15 company that cares about consumers.

16 BY MR. TISI:

17 Q. And the institutional knowledge of
18 the safety of the products would include documents
19 that include the kinds of things I talked -- I
20 showed you today that, number one, that people
21 were recommending risk mitigation in the '90s and
22 2000s. True?

23 A. Again, there were multiple studies
24 that were going on --

1 whether it's a lot or a little.

2 Q. It's a majority of what you've
3 discussed?

4 A. I've discussed lots of things in
5 here.

6 Q. Okay. All right. We'll let the
7 judge understand and take a look at your report
8 and see how much asbestos you have discussed.

9 But based upon everything that you
10 know, distilling it in its most clear form, is the
11 testing methodology used by J&J -- this really is
12 a yes or no question -- a hundred percent
13 sensitive for the detection of asbestos? 100
14 percent.

15 MR. EWALD: Objection to form.

16 THE WITNESS: I am not
17 opining on testing or sensitivity,
18 reliability or validity of the testing.

19 BY MR. TISI:

20 Q. Okay. Well, that cuts about -- out
21 about 90 percent of your report. So thank you.

22 MR. EWALD: Objection to form.

23 Mischaracterizes testimony.

24 BY MR. TISI:

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1 "There is a difference between those
2 two, two statements, yes."

3 A. I see what's written.

4 Q. Okay. So you would agree with
5 Dr. Hopkins that there's a difference between
6 saying something is asbestos-free and something
7 saying that there's no detectable asbestos,
8 correct?

9 A. Again, I am not a toxicologist, and
10 I am not opining on that.

11 What I do know is that premier
12 scientists in the world -- Dr. Pooley, for
13 example -- examined Italian talc, examined Vermont
14 talc and found no asbestos, as well as other --
15 other experts as well.

16 Q. Honestly, again, not answering my
17 question.

18 My question is: Is there a
19 difference between saying talc is asbestos-free
20 and talc -- there's no detectable level of --
21 there's no detectable talc?

22 A. Again --

23 Q. Asbestos.

24 I'm asking: Is there a difference,

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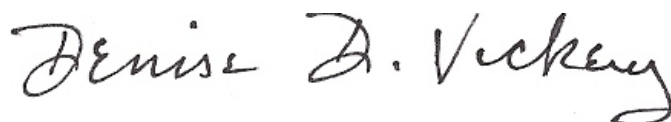
1 CERTIFICATE OF REPORTER

2 DISTRICT OF COLUMBIA)

3 I, Denise Dobner Vickery, a
4 Registered Court Reporter and Notary Public of
5 the District of Columbia, do hereby certify that
6 the witness was first duly sworn by me.

7 I do further certify that the
8 foregoing is a verbatim transcript of the
9 testimony as taken stenographically by me at the
10 time, place and on the date herein set forth, to
11 the best of my ability.

12 I do further certify that I am
13 neither a relative nor employee nor counsel of
14 any of the parties to this action, and that I am
15 neither a relative nor employee of such counsel,
16 and that I am not financially interested in the
17 outcome of this action.

18
19 
20

21 DENISE DOBNER VICKERY, CRR,RMR
22 Notary Public in and for the
23 District of Columbia

24 My Commission expires: March 14, 2028